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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 802/2016**

S H HEALTH SANTUARY PVT. LTD. Petitioner

Through **Mr. Faiyaz Hasan, Mr. Varun Kapur
and Mr. Ali Anwar, Advocates**

versus

ANNU BIJARNIA Respondent

Through **Mr. Satinder Singh, Advocate**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **03.05.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996(hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes between the parties which have arisen in connection with the Memorandum of Understanding (MOU) dated 23.04.2014. The said MOU includes an arbitration clause, which is set out below:-

“That in case of any dispute arises among the parties on any matter relating to this dissolution deed, the matter be referred to Arbitration under the Indian Arbitration and Conciliation Act and any award by such arbitration shall be final and binding on both the parties and that Delhi courts alone shall have jurisdiction on this agreement.”

2. The learned counsel for the respondent does not dispute the existence of said MOU dated 23.04.2014. He, however, states that this Court does not

have jurisdiction to entertain the present petition as no cause of action has arisen within the territorial limits of this Court. He further submits that the arbitration clause requires the disputes to be referred to an arbitrator appointed under Indian Arbitration and Conciliation Act, however there is no such statute - the correct title of the statute being "The Arbitration and Conciliation Act, 1996" - therefore no arbitrator can be appointed.

3. A plain reading of the arbitration clause indicates that the parties had agreed that Delhi courts alone would have jurisdiction to adjudicate the disputes with respect to the present MOU. Accordingly, the contention that this court does not have any jurisdiction is bereft of any merits. This has also been explained in a recent decision of the Hon'ble Supreme Court in **Indus Mobile Distribution Private Limited v Datawind Innovations Private Limited & Ors.** (Civil Appeal Nos. 5370-5371 of 2017 decided on 19.04.2017)

4. The contention that the Arbitration Act has been incorrectly referred to and therefore an arbitrator cannot be appointed, is also inconsiderable.

5. Accordingly, Mr Kamlesh Kumar, District & Sessions Judge (Retired) (Mobile No. 9971208844) is appointed as an arbitrator in terms of the arbitration clause for adjudicating the disputes between the parties. This is subject to the necessary disclosure being made under Section 12(1) of the Act and the Arbitrator not being ineligible under Section 12(5) of the Act. The fees of the Arbitrator shall be fixed in consultation with the learned counsel for the parties (in terms of the Schedule IV to the Arbitration and Conciliation Act, 1996). The parties shall approach the arbitrator for fixing the

preliminary hearing.

6. The petition is disposed of.

MAY 03, 2017

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VIBHU BAKHRU, J